IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.1444 OF 2005.

1. Smt.Sheetabai Balaram Kadam
2. Smt.Savitrabai Balaram Kadam
   Both Deceased.
3. Shri Baban Bala Kadam : Appellants.

versus

Mrs.Neela Uday Seth & ors. : Respondents.

Mr.S.G.Deshmukh for the appellants.

CORAM : D.B.BHOSALE, J.

DATED : JULY 16, 2007.

P.C.

1. Heard Mr.Deshmukh, learned counsel for the appellants.

2. Original Plaintiffs have filed this appeal challenging concurrent findings recorded by the Courts below by which their suit for declaration, injunction and possession of the suit properties has been dismissed. The

defendants/respondents claim right in the suit property on the basis of sale deeds executed in their favour by original Plaintiff Nos.1 and 2 in 1987. Original Plaintiff Nos.1 and 2 have died during pendency of these proceedings.

3. Mr.Deshmukh, learned counsel for the appellants, submitted that the Courts below ought to have examined the case in the light of a case set up by the plaintiffs that the alleged sale deeds were never executed by the Original Plaintiff Nos.1 Sitabai and Savitrabai. Sitabai and Savitrabai are the sisters and wives of Balaram and, Plaintiff No.3 is their son. Mr.Deshmukh submitted that when the sale deeds were executed, the age of Sitabai and Savitrabai was 67 and 83 years respectively and, it was not possible for them to execute the sale deeds voluntarily. He further submitted that the burden of proof is wrongly put on the plaintiffs by the Courts below to dis-prove the sale deeds. He also submitted that in the sale deeds there is absolutely no reference to an agreement of sale. All these circumstances, according to Mr.Deshmukh, create suspicion about execution of the sale deeds.

4. I perused both the judgments and more particularly Paragraphs 13 to 25 in the judgment of the appellate Court. It has come on record that the sale deeds (Exhibits 63 and 80) were executed on a stamp paper purchased by Sitabai - original plaintiff No.1 and it contained her signature having purchased the stamp paper. It has also come on record that the consideration amount of Rs.45,000/- was paid at the time of execution of the sale deeds in the presence of the Sub-Registrar. The possession was also handed over to the defendants on the date of registration of the sale deeds. All this has been proved by the defendants. Merely because, in Para 18 of the judgment, the appellate Court has observed that the son and the wife of original plaintiff No.2 were attesting witnesses and that they were not examined by the plaintiffs, does not mean that the burden was put on the plaintiffs, as tried to be contended by Mr.Deshmukh, learned counsel for the appellants. All the submissions advanced by Mr.Deshmukh are based on the findings of facts recorded by the Courts below. No substantial question of law is either raised or involved in the present appeal.

In the circumstances, this appeal is dismissed.

[D.B.BHOSALE, J]